

CODE OF MASSACHUSETTS REGULATIONS
TITLE 940 CMR: OFFICE OF THE ATTORNEY GENERAL

CHAPTER

CMR 33.00 EARNED SICK TIME

940 C.M.R. 33.00: ~~Earned Sick Time~~

Section

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Section 33.01 Purpose, Scope and Other General Provisions

- ~~(1) **Authority.** 940 C.M.R. 33.00 is promulgated in accordance with and under the authority of Massachusetts General Laws (M.G.L.) c. 149, § 148C.~~
- ~~(2)~~(1) **Purpose.** To clarify practices and policies in the administration and enforcement of the Earned Sick Time Law, M.G.L. c. 149, § 148C.
- ~~(3)~~(2) **Scope.** 940 ~~C.M.R.~~CMR 33.00 applies to all employers ~~and with~~ employees ~~in the Commonwealth~~eligible to accrue and use earned sick time and all employees of those employers in accordance with ~~the statute~~M.G.L. c. 149, § 148C.
- ~~(4) **Benefits Maintained.** Nothing in these regulations shall affect any policy or practice of any employer that provides for greater, additional or more benefits or sick leave than those required hereunder or by M.G.L. c. 149, § 148C.~~
- ~~(5)~~(3) **Interaction with State and Federal Leave Laws.** The time off provided by M.G.L. c. 149, § 148C ~~is in addition to,~~ may run concurrently with time off provided by the Family Medical Leave Act, 29 U.S.C. § 2601 et seq., the Massachusetts Parental Leave Act, M.G.L. c. 149, § 105D, the Massachusetts Domestic Violence Leave Act, M.G.L. c. 149, § 52E, ~~and~~ the Small Necessities Leave Act, M.G.L. c. 149, § 52D, and other leave laws that may allow employees to make concurrent use of leave for the same purposes as M.G.L. c. 149, § 148C. Employees may choose to use, or employers may require employees to use, concurrent earned paid sick time, as provided under M.G.L. c. ~~like~~ 149, § 148C, to receive pay when taking other statutorily-authorized leave that would otherwise be unpaid.

Section 33.02 Definitions

As used in 940 CMR 33.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

Benefit Year. “Benefit year” is used interchangeably with “calendar year” for purposes of 940 CMR 33.00.

Break in ~~service~~Service. A period of time ~~of up to one year~~ extending from the date an employee last worked for ~~the an~~ employer until the employee’s return to employment with that employer, whether the separation was voluntary or involuntary.

Calendar ~~year~~Year. Any consecutive 12-month period of time as determined by an employer. Most employers will find it helpful to use the ~~“calendar year”~~ that they use for ~~calculating~~determining wages and benefits, including, for example: a year that runs from January 1 to December 31, ~~the~~ tax year, fiscal year, contract year, or ~~the~~ year running from an employee’s anniversary date of employment. ~~Employers shall apply the choice of “calendar “Calendar year” consistently and uniformly to all employees and shall inform their employees by way of a written notice at the date of hire what constitutes “calendar is used interchangeably with “benefit year.” However,” for the purposes of determining employer size, the term “calendar year” shall mean a year that runs from January 1 to December 31. 940 CMR 33.00.~~

Child. A biological, adopted, or foster child, a stepchild, a legal ward, or a child ~~of a person who for whom an employee~~ has assumed the responsibilities of parenthood.

Child ~~of a person who has assumed~~For Whom an Employee Has Assumed the responsibilitiesResponsibilities of parenthoodParenthood. A child of ~~a person an employee~~ standing in loco parentis, as defined by 29 U.S.C. § 2611(12) and 29 C.F.R. §§ 825.122(c), ~~and~~ 825.800.

Domestic ~~violence~~Violence. Abuse committed against an employee or the employee’s ~~dependent~~ child by: (1) a current or former spouse of the employee; (2) a person with whom the employee shares a child in common; (3) a person who is cohabitating with or has cohabitated with the employee; (4) a person who is related to the employee by blood or marriage; or (5) a person with whom the employee has or had a dating or engagement relationship. ~~This~~Except as otherwise specified herein, this term shall be consistent with M.G.L. c. 151A, § 1(g)(1/2), including any amendments thereto.

Date of ~~hire~~Hire. An employee’s first date of actual work for an employer. “Date of hire” is used interchangeably with ~~“commencement first date of employment actual work”~~ for purposes of ~~these regulations~~940 CMR 33.00.

Earned ~~sick time~~Paid Sick Time. Time off from work accrued by an employee and provided by an employer that can be used for the purposes described in 940 CMR 33.02: Definitions for Earned Sick Time compensated at the same hourly rate that the employee earns at the time the employee uses the paid sick time; provided, however, that the same hourly rate shall not be less than the effective minimum wage under M.G.L. c. 151, § 1 where applicable.

Earned Sick Time. Time off from work accrued by an employee during hours worked and provided by an employer to allow an employee to:

(1) care for the employee’s child, spouse, parent, or parent of a spouse, who is suffering from a physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care;

- (2) care for the employee's own physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care;
- (3) attend ~~the employee's~~ routine medical appointment or a routine medical appointment for the employee's child, spouse, parent, or parent of spouse; ~~or~~
- (4) address the psychological, physical or legal effects of domestic violence ~~as defined in subsection (g 1/2) of section 1 of chapter 151A. Earned sick time includes time necessary to; or~~
- (5) travel to and from an appointment, a pharmacy, or other location related to the purpose for which the time was taken.

~~**Earned paid sick time.** Time off from work accrued by an employee and provided by an employer that can be used for the purposes described above for "earned sick time" and is compensated at the same hourly rate as the employee earns from the employee's employment at the time the employee uses the paid sick time; provided, however, that this hourly rate shall not be less than the effective minimum wage under M.G.L. c. 151, § 1.~~

Employee. Any person who performs services for an employer for wage, remuneration, or other compensation, as further defined by M.G.L. c. 149, § 148B, including full time, part-time, seasonal, and temporary employees. ~~The definition also includes interns who must be treated as employees under Massachusetts state law. An employee of a city or town is not considered an employee for purposes of this section until this law is accepted by vote or by appropriation of the city or town for which the employee works as provided in Article CXV of the Amendments to the Constitution of the Commonwealth., except:~~

- (1) ~~an employee of the United States government;~~
- (2) ~~an employee of a city or town is not considered an employee for purposes of this section until M.G.L. c. 149, § 148C, is accepted by vote or by appropriation as provided in Article CXV of the Amendments to the Constitution of the Commonwealth;~~
- (3) ~~an employee of a local public employer not covered by the term cities and towns, for example, school committees, including regional schools and educational collaboratives, shall be considered an employee only if M.G.L. c. 149, § 148C, is accepted by vote or appropriation of the prudential bodies governing said entity;~~
- (4) ~~a student attending a public or private institution of higher education located in the Commonwealth who is:~~
 - (a) ~~participating in a federal work-study program or a substantially similar financial aid or scholarship program;~~
 - (b) ~~providing support services to residents of a residence hall, dormitory, apartment building, or other similar residence operated by the institution at which they are matriculated in exchange for a waiver or reduction of room, board, tuition or other education-related expenses; or~~
 - (c) ~~exempt from Federal Insurance Contributions Act (FICA) tax pursuant to 26 U.S.C. § 3121(b)(10);~~
- (5) ~~a school-aged student under 20 U.S.C. § 1400 et. seq., the Individuals with Disabilities Education Act (IDEA); and~~
- (6) ~~an adult client who resides in a Massachusetts licensed program and performs work duties within the program setting as part of bona fide educational or vocational training.~~

Employer. Any individual, corporation, partnership or other private or public entity, including any agent thereof, who engages the services of an employee for wages, remuneration or other compensation, except:

- (1) ~~the United States government shall not be considered an Employer and employer;~~

- (2) cities and towns shall ~~only~~ be considered ~~Employers~~employers for the purposes of this law only if this law is accepted by vote or by appropriation as provided in Article CXV of the Amendments to the Constitution of the Commonwealth;
- (3) local public employers not covered by the term cities and towns, for example, school committees, including regional schools and educational collaboratives, shall be considered employers for the purposes of M.G.L. c. 149, § 148C, only if the law is accepted by vote or appropriation of the prudential bodies governing said entity; and
- (4) notwithstanding M.G.L. c. 15D, § 17, M.G.L. c. 118E, §§ 70-75, or any other special or general law to the contrary, the PCA Quality Home Care Workforce Council shall be deemed the Employer of all Personal Care Attendants, as defined in M.G.L. c. 118E, § 70, for purposes of M.G.L. c. 149, § 148C(d)(4), the Department of Medical Assistance shall be deemed the Employer of said Personal Care Attendants for all other purposes under M.G.L. c. 149, § 148C, and the Department of Early Education and Care shall be deemed the Employer of all Family Child Care Providers, as defined in M.G.L. c. 15D, § 17(a), for purposes of M.G.L. c. 149, § 148C.

Health ~~care provider.~~ Care Provider.

- (1) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or
- (2) any other person determined by the U.S. Secretary of Labor to be capable of providing health care services under 29 U.S.C. § 2611. ~~The term “health care provider”~~Health Care Provider includes ~~(4):~~
- a) podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the Commonwealth or any other State and performing within the scope of their practice as defined under State~~the General Laws or any other state~~ law; ~~(2)~~
- b) nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under in the Commonwealth or any other State law and ~~who are~~ performing within the scope of their practice as defined under the General Laws or any other State law; ~~(3)~~
- c) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; ~~(4)~~
- d) any health care provider from whom an employer or the employer’s group health plan’s benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and ~~(5)~~
- e) a health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

Same hourly rate:

~~For~~ **Regular Hourly Rate.** The amount that an employee is regularly paid for each hour of work.

Same Hourly Rate.

- (1) For employees compensated on an hourly basis, the same hourly rate means ~~the employee’s regular hourly rate.~~
- (a) ~~base rate wages and~~
- (b) ~~any other benefits paid or accrued on an hourly basis if the individual works.~~
- (2) For an employee~~employees~~ who ~~receives~~receive different pay rates for hourly work from the same employer, the ~~base~~same hourly rate ~~wages~~ means either:
- (a) the “wages the employee would have been paid for the hours absent during use of earned sick time if the employee had worked; or

~~(e)(b)~~ the blended rate of rate, determined by taking the weighted average of all regular rates of pay over the previous pay period. Where an employee works at two or more different types of work in a single pay, month, quarter or other established period, for a single of time the employer, for which different straight time rates of pay (not less than minimum wage) have been established, the “customarily uses to calculate blended rate” means the weighted average of all such rates during the previous pay period for similar purposes.

~~For an employee paid on a piece work basis, salary, fee or any basis other than an hourly rate~~ Whatever method the employer elects to determine the same hourly rate, (a) or (b) above, the employer must use a consistent method for each employee throughout a benefit year.

~~(2)(3)~~ For employees paid a salary, the same hourly rate means the employee’s total earnings in the previous pay period divided by the total hours worked during the previous pay period. For determining total hours worked during the previous pay period, employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1), the Fair Labor Standards Act, shall be assumed to work 40 hours in each week unless their normal work week is less than 40 hours, in which case earned sick time shall accrue and the same hourly rate shall be calculated based on the employee’s normal work week. Regardless of the basis used, an employee the same hourly rate shall be paid not be less than the effective minimum wage under M.G.L. c. 151, § 1, where applicable.

~~(4)~~ For an employee For employees paid on a piece work or a fee-for-service basis, the same hourly rate means a reasonable calculation of the wages or fees the employee would have received for the piece work, service, or part thereof, if the employee had worked. Regardless of the basis used, the same hourly rate shall not be less than the effective minimum wage under M.G.L. c. 151, § 1, where applicable.

~~(3)(5)~~ For employees paid on commission (whether base wage plus commission or commission only), the same hourly rate means the greater of the base wage or the effective minimum wage under M.G.L. c. 151, § 1, where applicable.

~~(6)~~ For tipped employees who ordinarily receive the service rate under M.G.L. c. 151, § 7 (\$3.00 plus tips as of January 1, 2015), the same hourly rate means the effective minimum wage under M.G.L. c. 151, § 1 (\$9.00 as of January 1, 2015).

~~(4)(7)~~ The same hourly rate shall not include:

- ~~(a)~~ sums paid as commissions, drawing accounts, bonuses, or other incentive pay based on sales or production;
- ~~(b)~~ sums excluded under 29 U.S.C. § 207(e); or), including contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance, and any other employee benefit plans;
- ~~(c)~~ overtime, holiday pay, or other premium rates. However, where an employee’s regular hourly rate is a “differential rate,” meaning a different wage rate paid for the same work performed under differing conditions (e.g. a night shift), the “differential rate” is not a premium.

Transition Year. The benefit year that includes July 1, 2015.

Section 33.03 Accrual and Use of Earned Sick Time

Employees ~~eligible~~ Eligible to ~~accrue~~ Accrue and ~~use earned sick time~~ Use Earned Sick Time:

- ~~(1)~~ An employee is eligible to accrue and use earned sick time if the employee’s primary place of work is in Massachusetts: regardless of the location of the employer. An employee need not spend 50% or more

~~than 50% of time~~ working ~~time~~ in Massachusetts for ~~it~~ a single employer in order for Massachusetts to be ~~his or her~~ the employee's primary place of work.

Example: A painter with a single employer works 40% of her hours in Massachusetts, 30% in New Hampshire and 30% in other states. Massachusetts is her primary place of work.

Example: A retail clerk relocates from New York to Massachusetts and takes a job at the employer's Boston store. Upon the first date of actual work at the Boston store, Massachusetts becomes the clerk's primary place of work.

- (2) If an employee is eligible to accrue and use earned sick time, then all hours the employee works ~~regardless of location of the work~~ must be applied toward accrual of earned sick time regardless of the location of the work and regardless of the location of the employer.

Example: In a single year, an employee of a catering company works ~~900~~ 550 hours in Massachusetts ~~and 150, 350 hours in other states.~~ New Hampshire and 200 hours in Maine. The caterer will accrue earned sick time on all ~~1,050~~ 100 hours worked for the catering company.

- (3) ~~Rate~~ Eligible employees permanently transferred to another state but remaining with the same employer will no longer accrue earned sick time but may use their accrued time.

Accrual of ~~accrual~~ Earned Sick Time:

- (3)(4) ~~Employees accrue earned sick time~~ through working on all hours worked at a rate of ~~not less than~~ one hour of earned sick time for every 30 hours ~~of work worked~~, including overtime hours, up to a cap of 40 hours per benefit year.
- (5) ~~Employees who are~~ Employees accrue earned sick time only on hours worked, not on hours paid when not working. For example, employees do not accrue earned sick time during vacation, paid time off, or while using earned sick time.
- (4)(6) Employees exempt from overtime requirements under 29 U.S.C. § 213(a)(1) shall be assumed to work 40 hours in each work week for purposes of earned sick time accrual unless their ~~job specifies~~ jobs specify a lower number of hours per week, such as ~~a~~ salaries part-time ~~employee~~ employees. In such ~~a~~ cases, earned sick time shall accrue based on that specified number of hours per week.

Payment of earned sick time:

Employees

- (7) ~~When used, earned paid sick time shall be~~ paid on a piece work or fee-for-service basis accrue earned sick time based on a reasonable measure of the same schedule as regular wages are paid. Employers may not delay compensating time the employees work, including established practices or billing.
- (a) Adjunct faculty compensated on a fee-for-service or "per-course" basis shall be deemed to work 3 hours for each "classroom hour" worked.
- (b) Family Child Care Providers, as defined by M.G.L. c. 15D, § 17, shall be deemed to work 6 hours for each "part day" worked and 10 hours for each "full day" worked.

~~(5)(8)~~ Once employees have accrued 40 hours of earned ~~paid~~ sick time ~~until~~ during the benefit year, they receive written verification or documentation of the use do not continue to accrue more hours of earned sick time, regardless of the additional hours they work.

~~(30)~~ ~~If~~ Once an employee ~~earns unpaid~~ possesses a bank of 40 hours of unused earned sick time, the employer may opt to delay further accrual until the employee ~~may substitute the use of other paid time off~~ he or she has a right to use (e.g., accrued vacation or personal time) to get paid for any absences due to the use of sick time.

90-day vesting period:

~~(7)(9)~~ Employees begin ~~accruing~~ draws down the bank of earned sick time ~~on the first date of actual work~~ and may begin to use any accrued earned sick time 90 calendar days after the first date of actual work, regardless of the number of days worked during the 90 calendar day period. to below 40 hours.

~~(10)~~ Employees who have been employed by their employer for at least 90 calendar days as At the end of July 1, 2015, begin ~~accruing~~ the benefit year, an employee may rollover up to 40 hours of unused earned sick time as July 1, 2015, and may use to the next benefit year.

~~(8)(11)~~ Employers may track accrual at an accrual rate of one hour of earned sick time, ~~whether paid for 30 hours worked or unpaid,~~ as it accrues any equivalent accrual rate with smaller increments of time (e.g. one minute of sick time per 30 minutes worked, two minutes of earned sick time per hour worked).

Use of Earned Sick Time:

~~(12)~~ Employees Employees who have been employed by their employer for less than 90 calendar days as of July 1, 2015, begin ~~accruing~~ have the right to use 40 hours of earned sick time ~~on July 1, 2015, and per benefit year if the employee works sufficient hours to earn the time.~~

~~(9)(13)~~ An employee may not use earned sick time, ~~paid or unpaid,~~ when they have been employed for 90 days. if the employee is not scheduled to be at work during the period of use.

The smallest amount of

~~(34)~~ Employees who commence employment after July 1, 2015, begin to accrue earned sick time as of their first day of actual work, and may use accrued earned sick time, paid or unpaid, when they have been employed for 90 calendar days.

Break in service:

~~(35)~~ Upon a return to work, an employee ~~shall maintain the right to use any accrued earned sick time after a break in service of up to~~ can use is one year from the last date of actual work. hour. For uses

~~(36)~~ If an employee returns to an employer after a break in service of up to one year from the last date the employee worked for the employer, the date of commencement of their employment shall be their first date of actual work prior to the break or breaks in service from the employer.

Example: An employee has accrued 20 hours of earned sick time and then goes on an unpaid sabbatical for 11 months. Upon the employee's return to employment, 11 months from the date of the employee

last worked for the employer, the employee shall have the right to use the 20 hours of earned sick time accrued before the start of the sabbatical.

~~Transition year (July 1, 2015 until beginning of next Calendar Year):~~

~~(37) Employees shall begin to accrue earned sick time beginning on July 1, 2015.~~

~~(16) Example: If an employer adopts a January 1 to December 31 method of tracking accrual and the employee has used 16 hours of paid sick time in 2015 before July 1, 2015, the employer must allow the employee to use up to 24 hours of earned paid sick time in the remainder of the year. Any unused, earned paid sick time accrued beyond 24 hours may be carried over into 2016, one hour~~

~~(14) An employer shall not be required to provide more than 40 hours of earned paid sick time during the transition year, and any paid leave given prior to July 1, 2015, will be credited.~~

~~(39) If an employer must provide earned paid sick time, employees who took unpaid sick leave earlier in the calendar year shall still be entitled to accrue and use up to 40 hours of earned paid sick time.~~

~~Increments of earned sick time use:~~

~~(16)(14) Employees shall be entitled to may use earned sick time in hourly increments or in the smallest increment the employer's payroll system uses to account for absences or use of other time.~~

Example: Chris takes his daughter to a scheduled doctor's appointment during his regularly scheduled work time, but the entire trip takes 50 minutes. Chris has used one hour of earned sick time.

Example: A furniture company uses a payroll system that tracks time in 15-minute increments. Anna, an employee, goes to a dentist appointment and returns after 90 minutes. Anna has used 90 minutes of earned sick time.

(15) An employer may review with employees the allowable purposes for which earned sick time may be used under M.G.L. c. 149, § 148C.

(16) Earned sick time may not be invoked as an excuse to be late for work without an authorized purpose under M.G.L. c. 149, § 148C.

(17) An employee may not accept a specific shift assignment with the intention of calling out sick for all or part of that shift.

(17)(18) Where an employee's absence from work at a designated use of earned sick time requires the employer to hire a replacement or call in another employee and the employer does so, the employer may require the employee to use an equal number of hours as the replacement or call-in employee works, up to a full shift of earned sick time. If the employee lacks sufficient accrued earned sick time to cover such time away from work, the employer must provide sufficient job-protected unpaid leave to make up the difference in that shift.

Example: A food broker's fleet departs from the employer's principal place of business at 3:00 AM Monday through Friday to ensure timely delivery of perishable items to scheduled customers. The

drivers' shifts vary slightly depending on the route, but average 8 hours with loading and unloading. The employee responsible for the upper Cape Cod deliveries arrives at the employer's principal place of business at 5:00 AM after spending the night in the ER with a sick child. The employer was notified by phone of the emergency, and called in an off-duty employee to cover the upper Cape Cod deliveries for the absent driver's shift. In this example, the employer may require the absent employee to use ~~an entire 8-hour shift to cover the~~ eight hours of earned sick time ~~used for that day.~~

Use of earned sick time before accrual permitted by mutual agreement:

~~(42) By mutual agreement with the employer in writing, employees may use earned sick time before accruing it.~~

Alternatives to use of earned sick time:

~~An employer and employee by mutual agreement may~~ Example: The employee, a maternity ward nurse, is scheduled to report for her 12-hour shift at 8:00 A.M. but calls her supervisor at 6:00 A.M. to report that she will not be available to work until 12:00 P.M. that day due to a sudden illness in the family. The supervisor is able to secure a replacement for the first four hours of the employee's shift and must allow the employee to report for duty at 12:00 P.M. In this example, the employer may not require the absent employee to use more than four hours of her earned sick time.

~~(19) Where an employer does not hire a replacement or call in another employee but the employee's use of earned sick time results in the employee missing transportation to a work site, the employer may require the employee to use earned sick time only until the employee arrives at the work site.~~

Example: The employee, a landscaper, calls his supervisor before the start of his 6-hour shift at 8:00 A.M. to report that he has to take an ill parent to the hospital. The landscaper's crew leaves for a new job site and the employee is not replaced. The employee arrives at the job site by 9:00 A.M. after finding a ride on his own. The employee need only use one hour of earned sick time.

~~(19)(20) An employer shall not require an employee to make up time off from work as a condition of using earned sick time. An employee and employer may, however, by mutual agreement arrange for the employee to work additional hours during the same or next pay period to avoid the use of, and payment off for earned sick time. Any additional hours worked to avoid the use and payment of earned sick time are subject to state and federal wage and hour laws, including payment of overtime.~~

~~(21) Employers and their fee-for-service employees may arrange to make up hours during the same pay period or any future pay period that is mutually agreeable.~~

~~(22) Employers and employees, by mutual written agreement, may arrange for employees to use earned sick time before accruing it and for employers to count the use against future accrual.~~

~~(23) If an employee is committing fraud or abuse by engaging in an activity that is not consistent with allowable purposes for earned sick time under M.G.L. c. 149, § 148C, an employer may discipline the employee for misuse of sick leave.~~

- (24) If an employee is exhibiting a clear pattern of taking leave on days just before or after a weekend, vacation, or holiday, an employer may discipline the employee for misuse of earned sick time, unless the employee provides verification of authorized use under M.G.L. c. 149, § 148C.

Payment of Earned Sick Time:

- (25) Earned paid sick time is paid at the same hourly rate listed in 940 CMR 33.02: *Definitions* Same Hourly Rate.

- (26) When used, earned paid sick time must be paid on the same schedule as regular wages are paid. Employers may not delay compensating employees for earned paid sick time.

- (44) ~~Employers~~ An employer shall not require an employee who has used earned sick time to make up time off from work.

- (45) ~~At the end of the calendar year, an employee may carry over up to 40 hours of unused earned sick time to the next calendar year.~~

- (27) ~~An employer shall~~ have the option, but is not required, to offer an employee a payout of pay out employees for up to 40 hours of unused earned sick time at the end of the benefit year or when the employee changes jobs within the employer's employment. Employers paying out 16 hours or more shall provide 16 hours of unpaid sick time until the employee accrues new paid time, which shall replace the unpaid time as it accrues. Employees paying out less than 16 hours shall provide an amount of unpaid sick time equivalent to the amount paid out until the employee accrues new paid time, which shall replace the unpaid time as it accrues.

- (28) Employers shall have the option, but are not required, to pay out unused earned sick time upon separation from employment.

90-Day Vesting Period:

- (29) Employees begin accruing earned sick time on the first date of actual work and may begin to use any accrued earned sick time 90 days following their first dates of actual work, regardless of the number of days worked during the 90-day period.

- (30) Employees who have been employed for at least 90 days as of July 1, 2015, meaning their first dates of actual work occurred on or before April 2, 2015, may use earned sick time, whether paid or unpaid, as it accrues.

Example: Jasper's first date of actual work as a salesperson at a shop is October 1, 2016. Jasper will be eligible to use any accrued earned sick time 90 days later, which is December 30, 2016.

Break in Service:

- (31) Following a break in service of up to four months, an employee shall maintain the right to use any unused earned sick time accrued before the break in service.

(32) Following a break in service of between four and 12 months, an employee shall maintain the right to use earned sick time accrued before the break in service if the employee's unused bank of earned sick time equals or exceeds 10 hours.

Example: An employee has accrued 20 hours of earned sick time and then goes on an unpaid leave of absence for 11 months, starting June 1, 2016. Upon the employee's return to employment on May 1, 2017, eleven months from the date of the employee last worked for the employer, the employee shall have the right to use the 20 hours of earned sick time accrued before the leave of absence began.

(33) Following a break in service of up to twelve months, employees maintain their vesting days from the employer and do not need to restart the 90-day vesting period.

Transition Year:

(34) Employees shall begin to accrue earned sick time beginning on July 1, 2015 employer's calendar year, and shall be eligible to use their earned sick time 90 days after their first date of actual work, should a qualifying need arise.

(35) An employer shall not be required to provide more than 40 hours of earned paid sick time during the transition year, and any paid leave given in the benefit year prior to July 1, 2015, will be credited.

Example: An employee used 15 hours of paid leave time as of July 1, 2015. The employer must allow the employee to earn and use up to 25 hours of earned paid sick time in the remainder of the benefit year.

Transition Year: Safe Harbor for Employers with Existing Policies Providing Paid Time Off

(36) Employers with a policy in existence on May 1, 2015 that provides paid time off or paid sick leave, shall be deemed in compliance with the Earned Sick Time law until January 1, 2016 provided the employer makes:

- a) Full-time employees on the policy have the right to earn and use at least 30 hours of paid time off/paid sick leave between January 1, 2015 and December 31, 2015;
- b) On and after July 1, 2015, all employees not previously covered by the policy, including part-time employees, seasonal employees, temporary employees, new employees, and per diem employees must either:
 - i) accrue paid time off at the same rate of accrual as covered full-time employees; or
 - ii) if the policy provides lump-sum allocations, receive a prorated lump-sum allocation based on the provision of lump sum paid time off/paid sick leave to covered full-time employees. Such lump-sum allocations may:
 - (1) where lump sums of paid time off are provided annually, be halved for employees who receive coverage as of July 1, 2015, and proportionately reduced for employees hired after July 1, 2015; and/or
 - (2) be proportionate for part-time employees;

If an employee is compensated other than on an hourly or salaried basis, the employee must accrue or receive lump-sum allocations based on a reasonable approximation of hours worked; and

- c) 30 hours of paid time off/paid sick leave or such lesser amounts as are earned or used by employees under this section must be:
 - i) job-protected leave subject to the law's anti-retaliation provisions;

~~(22)ii) available to the employee at least 16 hours of sick time at the beginning of the new calendar year. Employers shall have the option but are not required to payout unused earned paid sick time upon separation from employment. for the allowed purposes of the leave under M.G.L. c. 149, § 148C; and~~

~~iii) available to the employee after January 1, 2016 if unused during the Transition Year unless the policy provides lump sum allocations that make rollover unnecessary.~~

~~(37) In all other respects, during this transition period, employers may continue to administer paid time off under policies in place as of May 1, 2015.~~

~~(38) Employers with the option to utilize the safe harbor may also choose full compliance with M.G.L. c. 149, § 148C, and 940 CMR 33.00 beginning July 1, 2015 for some or all employees.~~

~~(39) On or before January 1, 2016, all employers operating under this safe harbor provision must adjust their policies providing paid time off/paid sick leave to conform to M.G.L. c. 149, § 148C, and 940 CMR 33.00.~~

Section 33.04 Employer Size

~~(47) An employer is not permitted to payout sick time as it accrues during the employer's calendar year or otherwise cause a forfeiture of an employee's right to accrued sick time.~~

~~Section 33.04~~ ~~Employer Size~~

~~(1) An employer must provide earned paid sick time to all eligible employees if:~~

~~(a)(1) the employer maintained an average of 11 or more employees on the payroll during 20 or more weeks (whether consecutive or not) over either the current or the preceding calendar benefit year; or,~~

Employers shall determine the average number of employees by counting the number of employees, including full time, part-time, seasonal, and temporary employees, on the payroll during each pay period and dividing by the number of pay periods. Employees furnished to an employer by a temporary staffing agency and paid by the staffing agency count as employees of both the staffing agency and the employer for the purpose of determining employer size.

~~(b) If an employer the employer maintained 11 or more employees on the payroll during 16 consecutive weeks over the current or preceding calendar year.~~

~~(2) uses multiple start dates for the benefit year, such as dates based on employees' anniversaries of hire, the employer should calculate employer size based on the previous January 1 to December 31 calendar year.~~

~~(2)(3) All of an employer's employees, including full-time, part-time, seasonal, and temporary employees, whether working in or outside Massachusetts; and regardless of their eligibility to accrue and use earned sick time, shall be counted for the purpose of determining employer size.~~

~~(3)(4) All other employers not required to provide earned paid sick under the Earned Sick Time law and these regulations with fewer than 11 employees must provide eligible employees with the right to accrue and use up to 40 hours per calendar of earned unpaid sick time per benefit year of earned unpaid sick time.~~

- ~~(4) Employees shall be provided notice 90~~Employers shall notify all eligible employees at least 30 days in advance in writing if earned sick time ~~that is paid based on an employer's size~~ will be changing to unpaid sick time based on an employer's size.
- ~~(5) When an employee has unused, earned paid sick time at the time that an employer converts from paid to unpaid sick time because of a reduction in size below 11 employees, the unused paid sick time shall remain paid sick time until exhausted, despite the fact that the employee will begin to accrue unpaid sick time.~~
- ~~(6)(5) When an employee has earned unpaid sick time, the sick time remains unpaid, notwithstanding from paid to unpaid or from unpaid to paid sick time based on a change in employer size, until the earned unpaid sick time is exhausted, despite the fact that the employee may begin to accrue earned paid sick time.~~
- (6) Earned sick time is paid when used, if the employer provided paid time when the employee accrued the time. Earned sick time is unpaid when used, if the employer provided unpaid time when the employee accrued the time.
- (7) When an employee has both unused earned paid and unpaid sick time available for use, the employee has the option of using either or both to cover the use of earned sick time.

Section 33.05 Notice of Use of Earned Sick Time

Employee requirement of good faith effort in providing notice:

- ~~(1) When using earned sick time, an employee shall make a good faith effort to provide notice of this need to the employer in advance of the use of the earned sick time.~~
- ~~(2) Reasonable notice may include compliance with an employer's reasonable notification system that the employee customarily uses to communicate with the employer for absences or requesting leave, provided that such requirements do not interfere with the purposes of the leave.~~
- ~~(3) If an employer does not have an existing policy or procedure for providing such notice, the employer shall establish such a policy or procedure, preferably in writing. The policy or procedure should enable the employee to effectively provide reasonable notice in a way that can be documented.~~
- (1) Employees must notify their employers before they use earned sick time, except in an emergency.
- a) Earned sick time cannot be used as an excuse to be late for work without an authorized purpose under M.G.L. c. 149, § 148C.
- b) For foreseeable or pre-scheduled use of earned sick time, the employer may have a written policy requiring up to seven days' notice, except where the employee learns of the need to use earned sick time within a shorter period.
- c) Notice required for unforeseeable absences is what is reasonable under the circumstances, recognizing that there are certain situations such as accidents or sudden illness for which advance notice might be infeasible.
- For multi-day absences, an employer may require notification of the expected duration of the leave or, if unknown, then
- ~~(4)(22) Employers may require employees to submit written verification that they have used earned sick time for allowable purposes after using any amount of sick leave. In no event, however, may an~~

~~employer request additional medical or other documentation from an employee substantiating the need to use earned sick time until the employee uses more than 24 consecutive hours of earned sick time.~~

- ~~(5) If an employee is committing fraud or abuse by engaging in an activity that is not consistent with allowable purposes for leave (e.g. being sick, caring for an ill family member) or by exhibiting a clear pattern of taking leave on days when the employee is scheduled to perform duties perceived as undesirable, an employer may discipline the employee for misuse of sick leave.~~

~~Reference to the earned sick time law is unnecessary to take leave:~~

- ~~(6) An employee may provide reasonable notice or reporting of an absence for earned sick time, whether foreseen or unforeseen, without explicitly referencing the law or using the terms “earned sick time.”~~
- ~~(7) An employer may review with the employee the purposes for which earned sick time may be used under the earned sick time law, provided that such review does not violate the privacy and confidentiality provisions of the earned sick time law or federal, or state medical privacy laws.~~

~~Employee notification of foreseeable or multi-day use of earned sick time:~~

- ~~(8) The employer may require up to seven days advance notice if the reason for earned sick time is for a pre-scheduled or foreseeable absence. Employers that require notice of the foreseeable use of earned sick time shall maintain a written policy that contains procedures for the employee to provide notice.~~
- ~~(9)d) If an employee anticipates a multi-day absence from work, an employer may require notification on a daily basis from the employee or the employee’s surrogate (e.g. spouse, adult family member or other responsible party), unless the circumstances make such notification infeasible.~~

~~Employee reporting the use of earned sick time that is not foreseeable:~~

- ~~(10) If an employee’s need for the use of earned sick time is unforeseeable, the employee must report this need to the employer as soon as is practicable and must comply with an employer’s reasonable notification system systems the employer creates, provided that the employees shall be allowed to communicate with the employer in a manner the employee customarily uses to communicate with the employer for unforeseeable absences, provided that such requirements do not interfere with the purposes for which the earned sick time is needed.~~
- ~~(11)(2) An employee shall comply with an employer’s notification system policy or call-in procedures for the use of unforeseeable earned sick time, recognizing that there are certain situations such as accidents or sudden illnesses for which such requirements might be unreasonable or infeasible.~~
- ~~(12) If an employee is unable to provide notice personally, notice may be provided by the employee’s surrogate (e.g. spouse, adult family member or other responsible party).~~
- ~~(3) An employee may provide notice without explicitly referencing the of M.G.L. c. 149, § 148C, or using the term “earned sick time” so long as the employer is on notice that the employee intends to use accrued time for a proper purpose.~~

- (4) Employers may seek verification of authorized use from a parent or guardian if they have reasonable suspicion that an employee, age 17 or under, is misusing earned sick time, unless verification would create a health and safety risk or hardship to the employee.

Section 33.06 Documentation of ~~use~~Use of ~~earned sick time~~Earned Sick Time

- (1) ~~When an employee's use of earned sick time results in an absence of more than 24 consecutive work hours, an~~ An employer may require written ~~certification~~ documentation for an employee's use of earned sick time that:
- a) ~~exceeds 24 consecutively scheduled work hours;~~
 - b) ~~exceeds 3 consecutive days on which the employee was scheduled to work;~~
 - c) ~~occurs within 2 weeks prior to an employee's final scheduled day of work before termination of employment, except in the case of temporary employees (i.e. "temp workers");~~
 - d) ~~occurs after 4 unforeseeable and undocumented absences within a 3-month period; or~~
 - e) ~~for employees aged 17 and under, occurs after 3 unforeseeable and undocumented absences within a 3-month period.~~
- (2) Written documentation that may be required includes:
- (1)a) ~~Written documentation signed by a health care provider as defined by 940 C.M.R. 33.02, to indicating the employer, that need for the use of earned sick time was for an authorized purpose taken; or~~
- (2) ~~Employees who do not have a health care provider may provide a signed written statement evidencing the need for the use of the earned sick time, without being required to explain the nature of the illness, in lieu of certification by a health care provider. Employers may use the Attorney General's model form as a guide for their own policies and may include a check off listing of the statutory reasons for permissible use of earned sick time in such form.~~
- (3)b) ~~Employees who have been absent for more than 24 consecutive work hours for reasons~~ With regard to indicating the need of leave related to domestic violence, ~~as defined in 940 C.M.R. 33.02 above, may provide~~ any of the following ~~certification, if documentation is required by the employer:~~
- a)i) ~~a restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;~~
 - b)ii) ~~a police record documenting the abuse;~~
 - c)iii) ~~documentation that the perpetrator of the abuse has been convicted of one or more of the offenses enumerated in chapter M.G.L. c. 265 where the victim was a family or household member;~~
 - d)iv) ~~medical documentation of the abuse;~~
 - e)v) ~~a statement provided by a counselor, social worker, health worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the individual employee in addressing the effects of the abuse on the individual employee or the individual employee's family; or~~
 - f)vi) ~~a signed written statement from the individual employee attesting to the abuse.~~
- (3) The employer may never require, as a condition of granting, using, or verifying earned sick time, that an employee provide documentation to explain the nature of the illness or the details of the domestic violence.

- (4) All evidence of domestic violence experienced by an ~~individual~~employee, including the ~~individual's~~employee's statement and corroborating evidence, shall not be disclosed by the employer unless written consent for disclosure is given by the ~~individual~~employee at the time the evidence is provided.
- ~~(5) The employer may never require any documentation to explain the nature of the illness or the details of the domestic violence.~~
- ~~(5) Certification and other documentation~~ Where documentation is required, employees who do not have health care coverage through a private insurer, the Massachusetts Healthcare Connector and related insurers, or an employer that provides health insurance to employees may provide a signed, written statement evidencing the need for the use of the earned sick time, without being required to explain the nature of the illness, in lieu of documentation by a health care provider. Employers may use the Attorney General's model form as a guide for their own policies and may include a check-off listing of the statutory reasons for permissible use of earned sick time on such form. Employers using their own verification form shall not require any additional information than what is required by M.G.L. c. 149, § 148C.
- (6) Documentation may be submitted to an employer in hand or by any ~~customarily used~~reasonable method ~~for the employee and employer to communicate~~, including e-mail, ~~mail, text message, or facsimile.~~
- (7) Employees must submit such ~~certification or~~ documentation within 30 days ~~of after the~~ taking of earned sick time for which such ~~certification or~~ documentation is required, unless, for good cause shown, an employee requires more time to provide such documentation.
- (8) If an employee fails to comply without reasonable justification with the ~~reasonable~~ documentation requirements of the employer as described in ~~the section on documentation above (940 C.M.R. 33.07) and there is no reasonable justification for the failure to comply~~06, the employer may ~~delay or deny~~recoup the ~~future use of accrued sum paid for~~ earned sick time ~~by the employee until the documentation is provided.~~ from future pay, as an overpayment. Employees must be put on notice of this practice.
- ~~(9) If the employee fails to provide documentation for unpaid earned sick time, the employer may deny the future use of an equivalent number of hours of accrued earned sick time until documentation is provided, but may not otherwise take adverse action.~~
- ~~(10) Employers may require employees to personally verify in writing that they have used earned sick time for allowable purposes after using any amount of sick leave, provided that the employee shall not be required to explain the nature of the illness or the details of the domestic violence. Employers may use the Attorney General's model form as a guide for their own policies and may include a check-off listing of the statutory reasons for permissible use of earned sick time on such form. Employers using their own verification form shall not require any additional information than what is required by M.G.L. c. 149, § 148C.~~
- ~~(11) Public employers performing essential public health and safety functions may require employees making any use of earned sick time during severe weather events or other emergencies to provide written documentation from a medical provider substantiating its use and to follow additional~~

notification procedures set forth by the employer. If an employee fails without cause to follow policies in such circumstances, an employer may discipline an employee for misuse of sick leave.

(12) Health care providers may require employees making any use of earned sick time during local, state or federally declared emergencies to provide written documentation from a medical provider substantiating its use and to follow additional notification procedures set forth by the employer. If an employee fails without cause to follow policies in such circumstances, an employer may discipline an employee for misuse of sick leave.

(13) An employer may require an employee to provide a fitness-for-duty certification, a work release, or other documentation from a medical provider before an employee returns to work after an absence during which earned sick time was used if such certification is customarily required and consistent with industry practice or state and federal safety requirements and reasonable safety concerns exist regarding the employee's ability to perform duties. "Reasonable safety concerns" means a reasonable belief of significant risk of harm to the employee or others.

Section 33.07 Allowable Substitution of Employers' Paid Leave ~~Plans~~ Policies

(1) Employers may ~~deviate from the accrual rate of earned~~ have their own sick leave or paid time off policies, so long as ~~their sick leave (or other paid leave) policies are more generous than what is required~~ all employees can use at least the same amount of time, for the same purposes, under the same conditions, and with the same job protections provided in M.G.L. c. 149, § 148C.

(2) ~~An employer's sick leave policy is more generous, for example, if it:~~
a) ~~provides more job protected sick time than the 40 hours of earned sick time required under the statute;~~
b) ~~provides an accrual of job protected sick time at a faster rate than that required under the statute and provides at least 40 hours of earned sick time each calendar year;~~
(2) ~~provides~~ Employers may have different paid leave policies for different groups of employees, so long as all employees can use at least the same amount of time, for the same purposes, under the same conditions, and with the same job protections provided in M.G.L. c. 149, § 148C.

Example: An employer may provide all employees working more than 20 hours per week with 80 hours of paid time off per benefit year while per diem workers receive earned sick time at the rate of accrual of one hour for every 30 hours worked.

(3) An employer's own paid time off, vacation, sick leave, or other policy may be substituted for earned sick time so long as 40 hours of time off provided under the policy, or such lesser amount as each employee might earn if the employer were not using the substitute policy, complies with all the provisions of M.G.L. c. 149, § 148C, and 940 CMR 33.00, including:
a) accrual at the rate of no less than one hour for every 30 hours of work;
b) pay at the employee's same hourly rate;
c) access for all uses authorized under M.G.L. c. 149, § 148C;
d) availability under the same conditions of notice and documentation; and
e) extension of the same job protections.

- ~~e)~~(4) Employers that provide employees with a lump sum of 40 hours or more of job-protected earned sick leave or paid time off at the outset of employment and at the start/beginning of each subsequent calendar/benefit year rather than tracking the do not need to track accrual of earned sick time over time; or allow any rollover, provided that such leave is otherwise consistent with M.G.L. c. 149, § 148C. provides employees with at least 40
- ~~d)~~ Employers that provide 40 or more hours of job-protected paid time off or vacation to employees that also may be used without restriction and accrues as least as fast as the one hour per 30 hours worked rate;
- ~~e)~~ permits employees to use job-protected sick time before it has been accrued and provides at least 40 hours of earned sick time each calendar year; or
- (3) ~~In order for paid time off, vacation or other policies (PTO) to be substituted for the time off from work provided under the statute, the following requirements must be met. The time off provided by the PTO must:~~
- ~~a)~~ accrue at a rate of no less than one hour of PTO for every 30 hours of work;
- ~~b)~~ be paid at the employee's same hourly rate, as defined in 940 CMR 33.02 above;
- ~~c)~~ be accessible on the same basis, meaning time may be taken for the authorized uses under the statute;
- ~~d)~~ come with the same notice requirements, consistent with M.G.L. c. 149, § 148C, shall not be required to provide additional sick leave to employees; and
- ~~e)~~ be afforded the same job protections.
- ~~(4)~~(5) ~~Attendance policies that reward employees for good attendance are permissible so long as employees who exercise use all their rights under the Earned Sick Time law and these regulations are not subject to any adverse actions. An employee's inability to earn a reward for good attendance based on his time for other purposes (i.e., vacation or use of earned sick time does not constitute an adverse action or interference with an employee's rights under this section personal time) and have need of sick leave later in the year, provided that the employers' leave policies make clear that additional time will not be provided.~~

Example: A sporting goods store provides its employees with 40 hours of paid vacation time that can also be used as earned sick time, consistent with M.G.L. c. 149, § 148C. Does the store need to provide any separate sick leave? No. A sporting goods store does not need to provide additional sick leave, but the store must put employees on notice that if they use all of their hours for vacation, there will be no additional sick leave available.

Employers using these schedules will be in compliance even if an employee's hours vary from week to week. Employers may accelerate the accrual or increase hours if they choose. Employees accruing

earned sick time on these schedules will have the right to rollover their sick leave up to 40 hours and accrual may be delayed while an employee maintains an unused bank of 40 hours.

For employees working an average of:

- a) 37.5 – 40 hours per week, provide 8 hours per month for 5 months.
- b) 30 hours per week, provide 5 hours per month for 8 months.
- c) 24 hours per week, provide 4 hours per month for 10 months.
- d) 20 hours per week, provide 4 hours per month for 9 months.
- e) 16 hours per week, provide 3 hour per month for 10 months.
- f) 10 hours per week, provide 2 hours per month for 10 months.
- g) 5 hours per week, provide 1 hour per month for 10 months.

Section 33.08 Prohibition on Retaliation and Non-~~Interference~~interference

- (1) It ~~shall be~~is unlawful for any employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under or in connection with this section, including, but not limited to, ~~by~~ using the taking of earned sick time under ~~this section~~M.G.L. c. 149, § 148C, as a negative factor in any employment action such as evaluation, promotion, disciplinary action, or termination, or otherwise subjecting an employee to discipline for the use of earned sick time under ~~these regulations~~M.G.L. c. 149, § 148C.
- (2) It ~~shall be~~is unlawful for any employer to take any adverse action against an employee because the employee opposes practices which the employee reasonably believes to be in violation of ~~this section~~M.G.L. c. 149, § 148C, or 940 CMR 33.08, or because the employee supports the exercise of rights of another employee under ~~this section~~M.G.L. c. 149, § 148C. Exercising rights under ~~this section~~M.G.L. c. 149, § 148C, shall include but not be limited to filing an action, or instituting or causing to be instituted any proceeding, under or related to ~~this section~~M.G.L. c. 149, § 148C; providing or intending to provide any information in connection with any inquiry or proceeding relating to any right provided under ~~this section~~M.G.L. c. 149, § 148C; or testifying or intending to testify in any inquiry or proceeding relating to any right provided under ~~these regulations~~M.G.L. c. 149, § 148C, or 940 CMR 33.00.
- (3) Examples of adverse actions include but are not limited to:
 - a) denying use or delaying payment of earned sick time;
 - b) terminating an employee;
 - c) taking away work hours;
 - d) negatively altering the terms or conditions of employment;
 - e) disciplining an employee under the employer's attendance policy;
 - ~~d)f~~giving ~~the an~~ employee undesirable assignments or schedule changes;
 - ~~e)g~~giving false negative references for future employment;
 - ~~f)h~~making false criminal reports to authorities about the employee;
 - ~~g)i~~reporting an employee to immigration authorities; or
 - ~~h)i~~threatening an employee with any of the ~~above listed~~ adverse actions listed in 940 CMR 33.08.
- (4) Attendance policies that reward employees for good attendance and holiday pay incentives that provide extra compensation for coming to work on the days immediately before and after a holiday are permissible so long as employees are not subject to any adverse actions for exercising their rights under M.G.L. c. 149, § 148C, and 940 CMR 33.00. An employee's inability to earn a reward for good

attendance or to receive a holiday pay incentive based on an employee's absence occasioning use of earned sick time shall not constitute an adverse action or interference with an employee's rights under 940 CMR 33.08.

Section 33.09 Recordkeeping and Disclosure

- (1) Employers shall keep ~~a~~ true and accurate ~~record~~records of the accrual and use of earned sick time, consistent with the ~~employee~~ recordkeeping requirements ~~in~~of M.G.L. c. 151, § 15. However, if an employer provides time off to employees under a paid time off, vacation or other policy that complies with M.G.L. c. 149, § 148C, the employer is not required to track and keep a separate record on accrual and use of earned sick time, except employers must keep records of the time designated as earned sick time where the employer chooses to maintain separate policies under 940 CMR 33.07(7).
- ~~(2)~~ Employers ~~must~~shall maintain such records for a period of three years and must provide ~~a copy of the records~~copies upon demand by the Attorney General or ~~designee. An employer shall allow an a~~ designee from the Attorney General's Office. An employee who requests such records pertaining to the employee at reasonable times and places shall be provided with a copy within ten business days, and, if the employee so requests, shall be allowed to inspect the original paper or electronic records kept under this section and pertaining to that employee.
- ~~(3)(2)~~ Employers shall inform their employees by way of a written notice at the onset of employment what constitutes "calendar year." Any change by an employer in the designation of what a calendar year means for purposes of accrual and use shall be prospective a reasonable time and shall not cause a loss or forfeiture of any employee's accrued earned sick time place.
- ~~(3)~~ Employers shall post a notice of the ~~Earned Sick Time law and these regulations~~M.G.L. c. 149, § 148C, prepared by the Attorney General, in a conspicuous ~~location~~place accessible to employees in every ~~establishment~~location where eligible employees ~~with rights under this law and these regulations~~ work; ~~and.~~
- (4) Employers shall provide a hard copy to their or electronic copy of this notice to all eligible employees, or include the employer's policy on earned sick time or the employer's allowable substitute paid leave policy in any employee manual or handbook.

Section 33.10 Violations of the Earned Sick Time Law

Violation of any provision of ~~the Earned Sick Time Law~~, M.G.L. c. 149, § 148C, or ~~these regulations~~, 940 ~~C.M.R.-CMR~~ 33.00 shall be subject to ~~paragraphs~~ M.G.L c. 149, § 27C(b) (1), (2), (4), (6) and (7) ~~of subsection (b) of M.G.L. c. 149, § 27C(b)~~ and to § 150.

Section 33.11 Severability

If any provision of 940 ~~C.M.R.-CMR~~ 33.00 or the application of any provision of a regulation to any person or circumstance is finally held invalid by a court of competent jurisdiction, the validity of the remainder of 940 CMR 33.00 ~~and the applicability of such provision to other persons or circumstances~~ shall not be affected.

REGULATORY AUTHORITY

